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664784—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 153

SIDNEY D. PALMQUIST, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals affirming petitioner's conviction (R. 85–88) and its opinion denying his petition for rehearing (R. 103–104) are reported at 149 F. 2d 352. The opinion of the district court denying petitioner's motion for a new trial appears at pages 11–12 of the record.

JURISDICTION

The judgment of the circuit court of appeals was entered April 14, 1945 (R. 88), and a petition for rehearing (R. 89–102) was denied May 22, 1945 (R. 104). The petition for a writ of cer-

tiorari was filed June 22, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

The principal question presented is whether the evidence is sufficient to support petitioner's conviction for resisting a federal officer in the performance of his official duties.

STATUTE INVOLVED

The Act of May 18, 1934, c. 299, 48 Stat. 780, 18 U. S. C. 253–254, provides in pertinent part:

> Sec. 2. Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person * * * while engaged in the performance of his official duties, or shall assault him on account of the performance of his official duties, shall be fined not more than $5,000, or imprisoned not more than three years, or both; and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

STATEMENT

Petitioner was convicted on the first count of a three-count indictment returned against him in the United States District Court for the Southern

District of Florida charging that, in violation of 18 U. S. C. 254, he unlawfully, knowingly, and wilfully resisted an officer of the Internal Revenue engaged in the performance of his official duties and assaulted such officer with a shotgun (R. 2–3, 10). Petitioner was sentenced to imprisonment for two years (R. 14), and on appeal the judgment was affirmed (R. 88).

The evidence for the Government may be summarized as follows:

Carter, an agent of the Alcohol Tax Unit of the Internal Revenue Bureau, received information that petitioner was operating a still near a farm known as the Bennett place, and that liquor would be transported from there during the night of October 22, 1943 (R. 23). Carter and two state officers, Morgan and Fox, drove to the vicinity of the Bennett place at about 6:30 p. m. on the night of October 22. They noticed a pick-up truck being driven toward the Bennett place which bore the license number that had been given to them. They followed the truck for a short while and then parked their car on the side of the highway. (R. 18, 23, 37–38.) Carter and Fox remained in the car and Morgan went on toward the house. The arrangement was that, if Morgan saw anything loaded on to the truck, he was to signal Carter and Fox by flashlight. (R. 18, 38.) About twenty minutes later, Carter saw a light at Bennett's place and then the headlights of a car

flashed on and off. Fox thought that Morgan had stopped the truck and was signaling to them. Carter and Fox started their car. As they were going down the road, the truck came toward them and Carter crowded it to the edge of the road. He called out, "Federal officers, hold everything!" The driver of the truck attempted to get it away but could not. Petitioner jumped out and turned a double-barreled shotgun on Carter and Fox. Carter again stated that he was a federal officer. Petitioner replied that he did not care who they were. (R. 19, 20, 40, 41, 46; see also R. 68.) By that time Morgan came out from the bushes near the road behind the truck and identified himself. Petitioner covered Morgan with his gun and ordered the three officers back to the government car. The officers entered the car and drove away. (R. 19–20, 40–41.)

In submitting the case to the jury, the judge charged that Carter had no legal right to arrest petitioner unless he knew or had reasonable grounds to believe that petitioner was then and there committing an offense against the United States; that unless they found such knowledge or reasonable grounds, petitioner had a full right to resist the officers (R. 71–72); that it was clear from the evidence that Carter had no knowledge of an offense against the United States, but that it was for the jury to determine whether he had reasonable grounds to believe that an offense was

being committed (R. 73). He also charged that, in order to convict, the jury must find that petitioner knew that Carter was an officer of the United States (R. 72, 73).

ARGUMENT

1. Petitioner contends (Pet. 9–10) that the evidence fails to establish that the federal officer was acting legally in stopping petitioner's truck and, hence, that it is insufficient to support the verdict. However, the trial judge specifically instructed the jury that before they could convict they must find that Carter had reasonable grounds to believe that petitioner was committing an offense, i. e., that a search of the truck under the circumstances shown would have been legal.[1] The evidence as to the officers' prior information concerning petitioner's activities and their arrangement for flashlight signals (see pp. 3–4, *supra*) clearly warranted the jury in concluding that the officers had reasonable grounds for stopping petitioner's truck. Cf. *Husty* v. *United States*, 282 U. S. 694, 700–702; *Carroll* v. *United States*, 267 U. S. 132, 160–162; *Jones* v. *United States*, 131 F. 2d 539 (C. C. A. 10); *Turner* v. *Camp*, 123 F. 2d 840 (C. C. A. 5); *Thompson* v. *United States*, 44 F. 2d 165 (C. C. A. 5).

[1] In view of this charge the case does not present the question as to whether an officer who exceeds his authority is nevertheless engaged in the performance of his official duties within the purview of 18 U. S. C. 254.

Petitioner's remaining contentions are frivolous:

a. His challenge to the jurisdiction of the district court on the ground that the indictment charged merely a state offense (R. 3–4; see Pet. 7) was properly overruled. There can be no question that interference with a federal officer in the performance of federal duties is a federal crime.

b. His demurrer to the indictment on the ground that it was too vague and indefinite to state an offense (R. 7–8; see Pet. 7–8) is refuted by a mere reading of the indictment (R. 2–3), which specifies the time, place, and circumstances of the crime in considerable detail. By the same token, the district court did not abuse its discretion in denying petitioner's motion for a bill of particulars (R. 5–7; see Pet. 8).

c. Petitioner's motion to suppress evidence (R. 4–5; see Pet. 9) was without merit. As the court below pointed out (R. 87), no evidence of the crime with which petitioner was charged was obtained as the result of a search, and in fact the officers never had the opportunity to make a search. The issue in the case was simply, as the court below concluded, "whether or not the defendant knowingly resisted [a federal officer] in the attempted performance of [his] duty. This was an issue of fact which the jury resolved against the defendant, with substantial evidence to support its verdict" (R. 88).

CONCLUSION

The decision below is correct and it presents no conflict of decisions or question of general importance. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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